

REMARKS/ARGUMENTS

In response to the Office Action mailed August 29, 2007, Applicants amend their application and request reconsideration in view of the amendments and the following remarks. In this amendment, Claim 6 is amended, no new claims have been added and claims 1-5 and 11-14 have been cancelled without prejudice so that Claims 6-10 remain pending. No new matter has been introduced.

The specification was objected to for a minor informality; accordingly, Applicants have amended the Abstract to confirm with the rules.

Claims 1, 2, 4-7 and 9-11 were rejected as being unpatentable over U.S. Patent Publication No. 2005/0065596 to Tseng et al. (Tseng) in view of Windecker et al. (Current Pharmaceutical Design and U.S. Patent Application Protection No. 2002/0188037 to Chudzik et al. (Chudzik). Claims 3 and 8 were rejected as being unpatentable over Tseng in view of U.S. Patent Publication No. 2002/0013676, Windecker et al. to Chudzik. These rejections are respectfully traversed.

The MPEP, in section 706.02(j), sets forth the basic criteria that must be met in order to establish a *prima facie* case of obviousness.

“To establish a *prima facie* case of obviousness, three basic criteria must be met.

First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the

reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. In *re* *Vaeck*, 947 F.2d, 488, 20 USPQ2d 1438 (Fed.Cir. 1991). See MPEP § 2143 - § 2143.03 for decisions pertinent to each of these criteria."

Section 2143.03 of the MPEP clarifies certain criteria in section 706.02(j).

"To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). "All words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)."

None of the references, whether taken alone or in combination disclose or suggest the subject matter claimed in independent Claim 6. Specifically, none of the references disclose immiscible polymers to control elution. Accordingly, all claims which depend therefrom are allowable over the cited art for the reasons given above. Accordingly, reconsideration and withdrawal of the rejection is respectfully requested.

Claims 6, 7, 8, 10 and 11 were provisionally rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 8, 9, 10 and 12 of co-pending Application No. 10/805,736 in light of Perbluda et al (Cancer aduratraisis). Claims 6-8 and 10 were provisionally rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 12-18 of copending application No. 10/796,397 in light of Waksman and Hardman et al. Claims 6-8 and 10 provisionally rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 11-16 of copending Application no. 10/7805,722 in light of Hardman et al. Claims 6, 8 and 10 provisionally rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claim 1-3 of copending application No. 11/149,416. Claims 6-8 and 10 provisionally rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 1 and 4-6 of co-pending application No. 11/131,720.

Applicants understand that these rejections are to alert Applicants that an actual rejection on the same ground may be issued if one of the applications ultimately issues. However in light of the amendments to the claims of the present invention and any potential amendments made to the claims of the cited applications, Applicants shall defer any arguments and/or actions until the applications actually issue.

A favorable action on the merits is earnestly solicited.

Respectfully submitted,

/Carl J. Evens/

By: _____
Carl J. Evens
Reg. No. 33,874

Johnson & Johnson
One Johnson & Johnson Plaza
New Brunswick, NJ 08933-7003
(732) 524-2518
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